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to one arm of an adjacent node.

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### **REMARKS**

The foregoing amendment to claim 38 has been made to correct the informality referred to in the action and is not considered to affect the scope of the claim. The amendment to claim 7 has been made to correct a grammatical error. The scope of the claim is not considered to be effected.

Applicant affirms the telephone conversation with the examiner on July 11, 2002 in which a provisional election was made, with traverse, to prosecute the subject matter of Species 1 and claims 1-5, 7-13, 16-23, 26-29 and 35-39.

### **CLAIM REJECTIONS - 35 U.S.C. §112**

Applicant traverses the rejection of claims 8 and 29 under 35 U.S.C. §112, second paragraph as being indefinite and failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The asserted deficiencies in the original claim, while perhaps not in the best syntax, are not such as to rise to a level of being indefinite and failing to particularly point out and distinctly state what is claimed. The mere absence of a precisely technical antecedent basis for a term that already exists in the claim does not, in claim 1 as filed, render the claim so that one of ordinary skill would not understand its scope.

The requirement that the claims "particularly point out and distinctly claim" the invention is met when a person experienced in the field of the invention would understand the scope of the subject matter that is patented when the claim is read in conjunction with the rest of the specification. "If the claims when read in light of the specification reasonably apprise those skilled in the art of the scope of the invention, §112 demands no more." Miles Laboratories, Inc. v. Shandon, 997 F.2d 870, 875, 27 USPQ2d 1123, 1126 (Fed. Cir. 1993); see also Union Pacific Resources Co. v.

Chesapeake Energy Corp., 236 F.3d 684, 692, 57 USPQ2d 1293, 1297 (Fed. Cir. 2001); North American Vaccine, Inc. v. American Cyanamid Co., F.3d 1571, 1579, 28 USPQ2d 1333, 1339 (Fed. Cir. 1993); Hybritech, Inc. v. Monoclonal Antibodies, 802 F.2d 1367, 1385, 231 USPQ 81, 94-95 (Fed. Cir. 1986).

While in some cases, the lack of an antecedent basis for a word or term in a claim may make a claim so confusing that one of ordinary skill would not be reasonably apprised of the scope of the claim, it does not follow that every failure to provide a strict antecedent basis in a claim necessarily has that effect. Here, for example, merely because the claim does not have a technical "antecedent basis" for "the gap" it cannot be said that one of ordinary skill would not be apprised of the scope of the claim because of that absence. Quite plainly, the claim calls for a stent in which there is a gap of substantially constant width between adjacent arms. While applicant does not disagree that the syntax of the claim would be improved by an amendment (for example, by replacing "wherein the" with --having a-- and inserting --that-- after "spiral"), applicant declines to make such an amendment in response to a rejection under 35 U.S.C. §112, because that provision of the statute is among those considered to be a statutory requirement for the grant of a patent. If the insufficiency in the antecedent basis in claim 8 were made merely as a claim objection, rather than a rejection under 35 U.S.C. §112, applicant would be amenable to such an amendment. Reconsideration is requested.

The same considerations apply to claim 29. The action correctly indicates that there is no strict antecedent basis for the phrase "the paralleling relation" in line 1. Claim 29 depends from claim 16 that in turn depends from claim 1. Claim 1 refers to the "circumscribing" relation of each arm with respect to a segment of the next adjacent arm. One of ordinary skill in the art, considering claim 29 in its entirety, including those claims from which it depends, as well as the rest of the specification would understand the scope of the claimed subject matter. Again, while applicant agrees that the claim would read better if "paralleling" were changed to --circumscribing--, the failure of claim

29 to do so is not a proper basis for a rejection under 35 U.S.C. §112. As with claim 8, applicant would be amendable to such an amendment if the present phrasing matter were "objected to" rather than made the basis for a statutory reason for rejection. Reconsideration is requested.

**CLAIM REJECTIONS - 35 U.S.C. §102**

Reconsideration is requested of the rejection of claims 1-3, 7-13, 16-18, 20-23, 26-29 and 35-39 as anticipated (35 U.S.C. §102(b)) by Ehr patent 6,334,870.

The rejection of claim 1 is based on the conclusion that Ehr discloses:

- at least three arms extending from the hub; and
- a transition region where each arm is connected to an arm of an adjacent node.

That analysis (1) misreads claim 1 and (2) misapplies Ehr '870.

First, the action appears to read claim 1 as calling for an arrangement in which "at least three arms" extend from each hub. The claim does not call for "at least" three arms. Rather, it calls for "three arms", no more and no less. Attachment 1 to the official action, a marked-up copy of FIGS. 29 and 30 of the Ehr '870 patent, discloses four-arm, not three-arm nodes. Moreover, the nodes in Ehr '870 are arranged as connectors between pairs of spaced serpentine annular expandable segments 12. Thus, in FIGS. 29 and 30, apparently relied on in the rejection, each arm of each node in FIG. 29 is connected, not to an arm of an adjacent node as claimed, but to a sinusoidal expandable member 12. In the embodiment shown in FIG. 30 on Attachment 1, each node has two of its four arms connected to two arms of an adjacent node while the other two of the arms of each node are connected to the sinusoidal radially expandable members 12. Neither of the configurations disclosed in Attachment 1 includes a plurality of nodes, each having a central hub and three arms, with each arm being connected, at a transition region, to an arm of an adjacent node. In Ehr, each arm of the node is not connected to an arm of an adjacent node.

Claims 2, 3, 7-13 and 16-22 each depend directly or indirectly from claim 1 and are not anticipated by Ehr for the same reasons. As to claim 13, the action does not point out where the Ehr '870 patent discloses the claimed additional pairs of adjacent nodes that extend along a generally helical row. Ehr '870 fails to anticipate claim 13 for this additional reason.

Claim 23 have been amended to define more clearly that the stent is defined substantially entirely by the three-arm nodes. Ehr '870 fails to show such an arrangement.

Claim 35 is directed to a stent having a plurality of nodes in which each node is connected to adjacent nodes by an individual generally S-shaped link. Additionally, claim 35 has been amended to recite that each of the nodes is connected to three additional nodes. Ehr '870 fails to disclose the claimed arrangement.

Claim 36 is directed to a stent in which the three arms of each node are of a sufficient length to flex to permit the central hub to be displaced transversely with respect to the surrounding regions of the stent wall. There is nothing in the Ehr '870 patent that discloses such an arrangement or the desirability of the claimed ability for the central hub to flex transversely (i.e., generally radially).

Reconsideration is requested.

Respectfully submitted



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**VERSION WITH MARKINGS TO SHOW CHANGES MADE****In the Claims**

Claim 7 has been amended as follows:

7. (Amended) A stent as defined in claims 1 wherein the arms of each of the nodes are arranged generally to define a spiral.

Claim 23 has been amended as follows:

23. (Amended) In a radially expandable tubular intraluminal stent defined by and having a plurality of interconnected members deformable to a larger diameter tubular configuration, the improvement comprising a plurality of nodes, each defined by a central hub and three arms, each of the arms in each of the nodes having a portion that circumscribes the hub and a segment of an adjacent arm of that node, the stent being defined substantially entirely by said nodes.

Claim 26 has been amended as follows:

26. (Amended) A stent as defined in claim ~~46~~ 23 further in which the arms define a generally spiral configuration.

Claim 35 has been amended as follows:

35. (Amended) A radially expandable intraluminal stent in the form of a generally tubular wall having cut out regions that define wall structure comprising:

a plurality of nodes, each node being connected to three adjacent nodes, each by an individual generally S-shaped link;

the links and nodes being arranged so that when the stent is expanded from its initial diameter to an expanded diameter, the circumferentially oriented links will elongate to a greater degree than the links oriented in a less circumferential direction.

Claim 38 has been amended as follows:

38. (Amended) A stent as defined in claim 1 further comprising the nodes being arranged in clusters of ~~6~~ six in which two arms of each node are connected to nodes of that cluster and one arm of each of the nodes in that cluster is connected to a node of another cluster.

Add the following new claims:

44. (New) A radially expandable intraluminal stent in the form of a generally tubular wall having open regions that define wall structure comprising:

a plurality of nodes, each node having a central hub and three arms extending from the hub, each arm circumscribing the hub and a segment of the next adjacent arm of that node;

each arm being connected, at a transition region, only to one arm of an adjacent node, the connected arms of the adjacent nodes defining a link between those nodes.

45. (New) A radially expandable intraluminal stent in the form of a generally tubular wall having open regions that define wall structure comprising:

a plurality of nodes, each node having a central hub and three arms extending from the hub, each arm circumscribing the hub and a segment of the next adjacent arm of that node;

each arm being connected, at a transition region, to an arm of an adjacent node, the connected arms of the adjacent nodes defining a substantially continuously curving S-shaped link between those nodes.

46. (New) A radially expandable intraluminal stent in the form of a generally tubular wall having open regions that define wall structure comprising:

a plurality of nodes, each node having a central hub and three arms

extending from the hub, each arm circumscribing the hub and a segment of the next adjacent arm of that node and defining a gap between the adjacent arms;

each arm being connected, at a transition region, to an arm of an adjacent node, the connected arms of the adjacent nodes defining a link between those nodes;

the gap being of substantially constant width up to the transition region.

47. (New) A stent as defined in claim 23 further comprising:

a gap defined between the portion of each of the arms that circumscribes a segment of an adjacent arm, the gap being of substantially constant width.

48. (New) A stent as defined in claim 23 wherein each arm is connected only to one arm of an adjacent node.